

## Internal Revenue Service

Department of the Treasury  
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Telephone Number:

In Re:

Refer Reply To:  
CC:PSI:B04  
PLR-143228-08  
Date:  
March 16, 2009

### Legend:

Husband =  
Wife =  
Child 1 =  
Child 2 =  
Trust 1 =  
Trust 2 =  
Date 1 =  
Date 2 =  
Date 3 =  
Date 4 =

Dear :

This is in response to a letter dated October 3, 2008, from your authorized representative requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations and § 2642(g) of the Internal Revenue Code to allocate generation-skipping transfer (GST) exemption to certain trusts.

The facts submitted and the representations made are as follows. On Date 1, Husband and Wife, as grantors, established Trust 1 and Trust 2. Trust 1 was established for the benefit of Husband and Wife's child, Child 1 and his children. Under the terms of Trust 1, all trust income was payable to Child 1 until such time as Child 1 had a child. On the date of birth of Child 1's first child, Child 1's interest in the trust was to terminate, and the corpus was to be held for the exclusive benefit of the child and any additional after born children of Child 1. Trust 1 was initially funded on Date 2 through Wife's transfer of publicly traded stock to Trust 1.

Trust 2 was established for the benefit of Husband and Wife's child, Child 2 and his children. Under the terms of Trust 2, all trust income was payable to Child 2 until such time as Child 2 had a child. On the date of birth of Child 2's first child, Child 2's interest in the trust was to terminate, and the corpus was to be held for the exclusive benefit of the child and any additional after born children of Child 2. Trust 2 was also initially funded on Date 2, through Wife's transfer of publicly traded stock to Trust 2.

Husband and Wife retained an accounting firm to prepare their Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Return on which the Date 2 transfers to Trust 1 and Trust 2 were reported. On the Forms 709, Husband and Wife each elected to treat gifts made by either of them as having been made one-half by each spouse pursuant to § 2513. However, no GST exemption was allocated with respect to the transfers to Trust 1 and to Trust 2.

Wife died on Date 3 and Husband died on Date 4. The failure to allocate GST exemption was discovered in the process of preparing Wife's Form 706 (United States Estate (and Generation-Skipping Transfer) Tax Return). You have requested an extension of time pursuant to §§ 2642(g) and 301.9100-3 to allocate Husband's and Wife's available GST exemption to the Date 2 transfers to Trust 1 and Trust 2. It is represented that each had unused GST exemption at the time of their respective deaths that is available to be allocated to Trust 1 and Trust 2.

#### Law and Analysis:

Section 2601 imposes a tax on every GST made by a transferor to a skip person. Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines the term "applicable rate" with respect to any GST as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2642(a)(1) provides that, generally, the inclusion ratio with respect to any property transferred in a GST is the excess of 1 over the "applicable fraction." With respect to a GST that is not a direct skip, § 2642(a)(2) provides that, in general, the applicable fraction is a fraction the numerator of which is the amount of the GST exemption under § 2631 allocated to the trust and the denominator of which is the value of the property transferred to the trust.

Section 2631(a) (as in effect at the time of the transfers at issue in this PLR) provided that for purposes of determining the GST tax, every individual shall be allowed a GST exemption of \$1,000,000 that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2652(a) and section 26.2652-1(a)(4) of the Generation-Skipping Transfer Tax Regulations provide that, if, under section 2513, one-half of a gift is treated as made by

an individual and one-half is treated as made by the spouse of the individual, then for purposes of the GST tax, each spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor spouse.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. Section 2642(g)(1)(B) further provides that for purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a generation-skipping trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, an extension of time of sixty (60) days from the date of this letter is granted to allocate Husband's and Wife's available GST exemption with respect to the Date 2 transfers made to Trust 1 and Trust 2. The allocations will be effective as of Date 2 and the inclusion ratio with respect to each trust will be determined based on the fair market value for federal gift tax purposes of the transfers on the dates of transfer. The allocations should be made on supplemental Forms 709 filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to each return.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Curtis G. Wilson  
Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures: Copy for § 6110 purposes

cc: